

THE

(18) 20

SPEECH

AND

PLEA

Of *Archibald* Marquesse of

ARGYLE

To the Parliament of

SCOTLAND

At *Edinburgh* on the 5. of this instant *March*. In answer
to the Charge of High Treason against him.

L O N D O N,

Printed by *H. Lloyd*, and *R. Vaughan*, for *Thomas Johnson*, at the
Golden Key in *St. Paul's Church-yard* 1661.

SPRUECH

P L E A

U N D E R

S C O T L A N D

L O N D O N



Edinburgh. 5. March. 1661.

At the Parliament House,

The Marquesse of Argyle being called in, gave in a Bill, containing several weighty reasons, desiring a continuation till the meeting of Parliament the morrow. His Lordship being removed, after long debate it was refused, and his Lordship being called in, my Lord Chancellor told him, it was refused; and ordered his Lordship to produce his defence, vvhherupon he spake as followveth.

May it please your Grace,



Y Lord Chancellor, This businss is of very great concernment to me, and not small in the preparation of it to the whole Nation. Yea, it may concern many of your Lordships (who are sitting here) and your posterity; and therefore I desire to have your Grace (my Lord Commissioner) and the remanent members of this Honourable Meeting your patience to hear me a few words, without prejudice or misconstruction, which anything I can say is obnoxious to.

I shall, my Lord, begin with the words of that godly king *Iehosaphat*, that good King of *Iudab*, (after he was come back in peace to *Ierusalem* in his instructions to his Judges, wherein he had them take heed, what they do, for they judge not men but for the Lord, who is with you in judgement, *2 Chron. 19. 17.* My Lord, I shall speak another word to many young men, who were either not born, or so young, that it is impossible they could know the beginning of those businesses, which are contained in the libel against me, being all that hath been done since the year 1638. So that they might have heard by report what was done; but not why, or upon what ground, and what some have suffered, but not what they have deserved. Therefore I desire your Lordships charity, untill all the particulars and several circumstances of every particular be heard, without which no man can judge rightly of any action. For as it is well observed by that incomparable *Grosius*, that *Aristotle* asserts; That there is no certainty in the Mathematicks, or morals; for as *Grosius* has it, The Mathematicks separate forms from matters; as betwixt strait and crooked there is no midst; but in Morals even the least circumstances vary the matter, they are wont to have something betwixt them with such latitudes, that the access is near sometime to this, sometime to that extreme; so that betwixt that which ought to be done, and that which ought not to be done is interwoven, that which may be done, but is never: Now to that other part whence ambiguity ariseth, often the particular instances are so obvious to every understanding man, that I need only to mention them.

Polybius, My Lord, makes much of his History depending upon these three, *Concilia, Causa, & Eventus*. And there are likewise other three, *Tempus, Loca, & persona*, the change whereof makes that which is lawfull duty, unlawfull; and on the contrary, so likewise in speaking or repeating words, the adding or paying from them will quite alter the sense and meaning; as also in wrighting, the placing the Comma's or punctions will quite alter the sense,

This is, my Lord, another Maxim, which I do not maintain as alwayes undepiable; but when there is no lawfull Magistrate exercising power and authority in a Nation, but an invading Usurper in possession, esteeming former laws crimes, in such a case (I say) the safety of the people is the supreme law.

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There is another Maxim which is not questioned by any, and it is Necessity has no Law: For even the Moral Law of God yields to it, and Christs Disciples in *Dauids* Example. For this *Seneca* says, Necessitie and humane imbecillitie breaks every Law. So he that Answers that Libel ——— (*The long Parliament Revived*) speaking of this last Parliament (which his Majesty calls a blessed healing Parliament) he says, The necessity to have it may dispence with some formalities. For *Ravanello* so much esteemed in matters of Scripture) divideth necessity, into absolute and hypothetick necessity, and makes that of submitting to Powers of absolute necessity. *Josephus* also (my Lord) that famous Historiari, when he mentioned *Dauids* Speech to his Children, after he had made *Solomon* (being but younger Brother) King, he exhorts them to unity among themselves, and submission to him, and his Authority; For if it should please God to bring a Forreign Power amongst you, you must submit to them, much more then to him who is your Brother, and one of your own Nation.

There is another Maxim (my Lord) *Inter arma silent Leges*, and it is well known, that divers Laws in *Scotland* were ordain'd with consideration of times of War, and times of Peace.

Another Maxim, *Ex duobus malis minimum eligendum est; cum unum eorum nequis evitare*, says *Arist.* *Cicero* & *Quintilian*, *cum diversa mala inter se comparantur, eorum minimum locum bene occupat.*

There is another Maxim, No man's intention by the event of any action, there being oftentimes so wide a difference betwixt the condition of the work, and the intention of the worker. Mans cause being only of Duty, the event is the Lords.

I shall only adde another Maxim, It cannot be admitted Virtue to abstain from Vice, but where it is in our power to commit the Vice, and we meet with a temptation.

As I have named shortly some Maxims, (My Lord) I shall humbly render some weighty considerations to your Lordships thoughts.

First Consideration is, that there is different considerations of Subjects actions, when their lawfull Magistrate is in the exercise of

his Authority by himself, or others lawfully constituted by him; and when there is no KING in Israel.

Secondly, That there is a more different consideration betwixt the Subjects actions, when the lawful Magistrate is in the Nation, and when he is put from it, and so forced to leave the People to the prevalent Power of a Foreign Sword, and the Invader in possession of Authority.

Thirdly, That there is a difference betwixt Subjects actions even with the invading Usurper, after the Representatives of a Nation have submitted to, and accepted of their Authority and Government, and they in possession several years, the Nation acknowledging their Constitutions, and all the Lawyers, presenting, and pleading them as Laws.

Fourthly, The actions of Subjects are to be considered when assisting the lawful Magistrate to their power, and never submitting to the invading Usurper, until they were Prisoners and could do no better.

Fifthly, That there is likewise consideration to be had of the actions of such Subjects being still Prisoners upon demand, under Articles to that purpose.

Sixthly, It is to be considered likewise of the actions of such a Subject, who was particularly noticed and persecuted by the Invaders, for his affection to the lawful Magistrate, and his Government.

Seventhly, It is to be considered, that there is a great difference betwixt actions done *ad lucrum cupiendum*, and those done *ad damnum evitandum*; that is to say, actions to procure benefit, and actions to shun detriment.

Eighthly, It is to be considered, that there hath ever been a favourable consideration had (by any Prince) of any person coming voluntarily, and casting himself upon a Prince's clemency.

Ninthly, It is to be considered, that his MAJESTY himself hath a glorious natural inclination unto Clemency and Mercy, which hath been so abundantly manifested to his Subjects in *England*, even to all (except some of the immediate Murderers

of

of his Royal Father) that it cannot be doubted, that the same will be wanting to his People in *Scotland*, who suffered by them (whom his MAJESY hath graciously pardoned) even for their dutyful service, and affection to his MAJESTY. Therefore, without thought of any prejudice to the Parliament, or honorable Meeting, I must make use of my Lord Chancelour of *England* his words, though in another case, saying, there cannot be too much evil befall those who do the best they can to corrupt his MAJESTIES good nature, and to extinguish his Clemency. For his MAJESTIES self Declared his natural inclination to Clemency in his Speech to both Houses of Parliament in *England*, wherein he hath with all his People conjured, desired, and commanded to abolish all Notes of discord, separation, and difference of parties, and to lay aside all other animosities, and the memory of past provocations, and to return to a perfect Unitie amongst themselves under his MAJESTIES protection, which he hopes all your Lordships will concur in, having so worthy a Pattern to follow: And as there is his MAJESTIES inclinations exprest, so 'tis most suitable to the Arms he bears as KING of *Scotland*, which is the Lyon, whose Motto is known to all ——— *Nobilis est ira Leonis*,

Pacifici Subjellis & debellare superbas: which is to say, to vanquish and subdue the proud, and spare such as are submissive: Of the which number I am one, and for that effect in all humility present this humble Submission to his MAJESTIE, and your Grace my Lord Commissioner in his MAJESTIES Name.

SUBMISSION.

FOr as meek as I *Archibald Marquesse of Argyll*, am accused of Treason, at the instance of his Majesty's Advocate, and being altogether unwilling to appear any wayes in opposition to his Sacred Majesty, considering also that this is the first Parliament called by his Majesty after his happy return to his Kingdoms and Government, for healing and repairing the distempers and breaches made by the late and long troubles and debates, that the great Affairs of his Majesty, and these Kingdoms, shall have no interruption upon occasion of any Procelle against me.

I will not represent the contagion and fatality of these times, where-with many others of these three Kingdoms have been involved, which hath produced many sad consequences and effects different contrary to our intentions, nor will I insist upon the defences of our actings in these Kingdoms before the prevailing of the late Usurpers, (if examined according to the strict interpretation and severity of laws) which may be esteemed a trespass of his Majesties Royall Commands, and a transgression of the Law, but (notwithstanding thereof) are by his Majesties clemency covered as with a veil of oblivion by divers Acts of Parliament, and others to that purpose, for the safety and security of his Majesties Subjects, and that my actings since, & compliance with so prevalent a partie, (which had wholly subdued this and all his Majesties other Dominions, and was universally acknowledged) may be looked upon as actions of meer necessity which have no law: for 'tis known, that during that time I had no favour from the Usurpers. It was inconsistent with, and repugnant to my Interest, and it cannot be thought (unless I had been dementate and void of reason) that I should have had freedom or affection to be for those conspired enemies to Monarchy, who could never expect or tolerate Nobility. And whereas that most horrid and abominable crime of taking away the precious life of the late King of ever glorious memory, is most maliciously and falsely charged upon me. If I had the least accession to that most vile and heinous